

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL NO. 1456
THIS DOCUMENT RELATES TO: TRACK TWO SETTLEMENT	CIVIL ACTION: 01-CV-12257-PBS Judge Patti B. Saris

PLAINTIFFS' MOTION TO RESPOND TO DKT. NO. 7941 ON JANUARY 15, 2011

Adam Levy, a former employee of Don Haviland, demands that Lead Class Counsel pay him fees for time spent while working at the Haviland Law Firm, including time on non-MDL matters. *See* Dkt. Nos. 7939 and 7941. In light of these pending motions, Levy, joined by the Kline & Specter Group, requested the Court not to provide Lead Class Counsel with the discretion to allocate to Class Counsel firms any fees awarded by the Court as a result of the Track Two Settlement. *See* Dkt. No. 7975. The Court denied the request, issued the Track Two Final Approval Order and preserved Lead Class Counsel's discretion to allocate fees among all Class Counsel, subject to review by the Court. *See* Dkt. No. 7979.

As to the pending motions filed by Levy and other members of the Kline & Specter Group, the Court issued the following order on December 8, 2011: "The parties shall attempt to resolve their dispute. Any unresolved issues regarding attorneys['] fees shall be presented to the Court by 1/15/2012." Dkt. No. 7978. Notwithstanding this Order, Levy is now insisting that Plaintiffs must file their opposition to his motion (Dkt. No. 7941) on December 15, 2011 (which would be the customary due date under the local rules) or shortly thereafter. Lead Class Counsel respectfully submit that the Court ordered the parties to try to resolve their dispute and to present

any unresolved issues by January 15 for a good reason: focusing on litigating the issue impedes efforts to reach a resolution. Therefore, we read the Court's order as clear direction to "stand down" from litigating until January 15, and – absent contrary direction from the Court – we will file our opposition to Levy's motion (Dkt. No. 7941) on January 15 (if no resolution is reached before then).

Furthermore, the team responsible for responding to Levy's motion has many competing deadlines in other litigation over the course of the next week to attend to, making it difficult to respond to the motion. And we very much would prefer not to respond to it during the ensuing holiday period. Indeed, we have always appreciated the Court's admonitions to avoid "heavy lifting" during the holidays.

Levy will likely take the position that he needs Lead Class Counsel's response to fully evaluate our position, but he does not. We have communicated the totality of our position that Levy is not entitled to the compensation he seeks in meet-and-confers comprised of telephone calls and emails. Levy does not need those positions repeated in a brief filed with the Court in order for Levy to assess the likelihood that the Court will find his motion baseless. We also suggest that, as the Court likely recognized in its December 8 Order, continued litigation of the issue will just further entrench the parties in their positions.

In conclusion, Lead Class Counsel respectfully request that, in the event that Levy's motion cannot be resolved, the Court accept their opposition to Levy's motion on January 15, 2011, as contemplated by the Court's December 8 Order.

DATED: December 14, 2011

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
55 Cambridge Parkway, Suite 301
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Jennifer Fountain Connolly
Hagens Berman Sobol Shapiro LLP
1629 K St. NW, Suite 300
Washington, DC 20006
Telephone: (202) 355-6435
Facsimile: (202) 355-6455

Jeffrey Kodroff
John Macoretta
Spector, Roseman Kodroff & Willis, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Kenneth A. Wexler
Wexler Wallace LLP
55 W. Monroe, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Marc H. Edelson
Hoffman & Edelson LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **PLAINTIFFS' MOTION TO RESPOND TO DKT. NO. 7941 ON JANUARY 15, 2011**, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 14, 2011, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman
Steve W. Berman